In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1639

STEPPING STONE ENTERPRISES, ET AL.,
PETITIONERS,

v.

ROBERT J. ANDREWS, ET AL.,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1976

No.

STEPPING STONE ENTERPRISES, LTD.,
A RHODE ISLAND CORPORATION,
and
HENRY V. DAVIS,
PETITIONERS,

v.

ROBERT J. ANDREWS, ROBERT H. MAGUIRE, CHARLES STANTON HAWKINS, LAWRENCE R. WETHERBEE, ROBERT S. POTTER and HENRY DAVID THOMAS,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Opinion Below

On 11 March 1976 the United States Court of Appeals for the First Circuit rejected the appeal of Stepping Stone Enterprises, Ltd. and Henry V. Davis from a deci-

sion of the United States District Court for the District of Rhode Island denying to Stepping Stone an injunction against the enforcement of General Laws of Rhode Island 1956, 5-22-1, 5-22-2, 5-22-4 and the Ordinance of the Town of West Greenwich, Rhode Island requiring a license for the production of musical entertainment. Stepping Stone was in the business of providing musical entertainment at its amphitheatre in the Town of West Greenwich and had at all times applied for and received a license therefor. After a rock concert in July 1975, which was a "smash" both figuratively and literally, the respondent members of the Town Council denied future applications for licenses on various grounds. Stepping Stone then filed a petition for decalartory and injunctive relief. The opinion of the Court of Appeals is reported in —— F.2d ——, and is reproduced at p. 18 *infra*.

Jurisdiction

The opinion of the United States Court of Appeals was rendered on 11 March, 1976 and the mandate issued on 6 April, 1976. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Are General Laws of Rhode Island 1956, 5-22-1, 5-22-2, 5-22-4 and the Town of West Greenwich Ordinance enacted pursuant thereto in derogation of Article I of the Amendments to the United States Constitution, the freedom of speech clause, as made applicable to the States through the due process clause of Article XIV, section 1 of the Amendments to the United States Constitution?

2. Assuming the aforesaid statutes and ordinance are constitutional, may a municipality, consistent with the

First Amendment, *supra,* impose a prior restraint on a petitioner's musical entertainment predicated upon the municipalities annoyance with past performances and the municipalities determination that the petitioner's services and facilities were "inadequate". Stated otherwise, are the conditions precedent to the issuance of future licenses by the municipality overbroad?

Statement

Stepping Stone Enterprises, Ltd. and its president, Henry V. Davis, participate in the production of musical entertainment at its ranch in the town of West Greenwich, Rhode Island. A recent rock concert was a "smash", both figuratively and literally. Attendance far exceeded initial estimates and the neighboring townspeople were annoyed by nuisances committed by patrons and others during and immediately after said concert. When Stepping Stone applied for its next batch of licenses the Town Council refused to issue licenses for musical entertainment. Stepping Stone announced its intention to produce without licenses whereupon the town officials threatened to interfere therewith. Stepping Stone then filed this instant case asking for an injunction against such interference by the town officials. The District Court denied Stepping Stone's prayers which the Court of Appeals affirmed.

Argument

We begin with the premise that musical entertainment is entitled to First Amendment guarantees of freedom of speech and expression. *Southeastern Productions* v. *Conrad,* 420 U.S. 546, 43 L.Ed.2 448, 95 SCR 1239; *California* v. *Larue,* 409 U.S. 109, 34 L.Ed. 342, 93 SCR

390; *Doran* v. *Salem, Inc.*, 422 U.S. 922, L.Ed.2 , 95 SCR 2561. While the record in this case reveals that the municipalities displeasure arose as a result of a rock concert produced by Stepping Stone, the municipality's refusal to issue licenses did not distinguish between rock concerts, country-western concerts or folk festivals.

Free speech is protected against censorship or punishment unless likely to produce a clear and present danger or a serious and substantial evil that arises far above public inconvenience, annoyance and unrest. *Terminiello* v. *Chicago,* 337 U.S. 1, 93 L.Ed. 1131, 69 SCR 894. In the instant case, the public inconvenience, annoyance and unrest arose because of trespasses upon private property by patrons and others attending Stepping Stone's rock concert, general litter and traffic congestion making it difficult for the performance of municipal safety services. The United States District Court, in its opinion of 16 October 1975, justified the refusal to issue a license to Stepping Stone on the ground that such refusal was consistant with a legitimate interest in the health and safety of the citizens of said town. As such, the District Court's rationale flew in the face of Stepping Stone's First Amendment rights.

Mere annoyance, objection by the citizenry, traffic regulation or protection of children does not authorize a municipality to prohibit expression protected by the First Amendment. *Erznoznik* v. *Jacksonville,* 422 U.S. 205, L.Ed.2 , SCR .

Nor does a hostile public reaction cause forfeiture of the constitutional protection afforded a speaker's message so long as the speaker does not go beyond mere persuasion and advocacy of ideas and, instead, attempts to incite riots. *Glasson* v. *Louisville,* 518 F.2d 899.

The right of free speech in the future cannot be forfeited because of disassociated acts of past violence or because of other associated incidents of abuse. *Cafeteria Employers Union* v. *Angelos,* 320 U.S. 293, 88 L.Ed. 58, 64 SCR 126; *Milkwagon Drivers* v. *Meadowmoor Dairies,* 312 U.S. 287, 85 L.Ed. 836, 61 SCR 552, 132 ALR 1200, or because it may provoke violence in others. *Id.* Nor can a municipality constitutionally deprive a theater of its First Amendment rights merely because it has exhibited obscenity in the past. *American Mini Theatres, Inc.* v. *Gribbs,* 518 F.2d 1014; *City of Delevan* v. *Thomas,* 334 N.E.2d 190; *Near* v. *Minnesota,* 283 U.S. 697, 75 L.Ed. 1357, 51 SCR 625.

The right of free speech is violated by an ordinance prohibiting the exercise thereof without a license. *Lovell* v. *City of Griffin,* 303 U.S. 444, 82 L.Ed. 949, 58 SCR 666.

Reasonable regulations for the exercise of a citizen's right of free speech are permissible. *Cantwell* v. *Connecticut,* 310 U.S. 296, 84 L.Ed. 1213, 60 SCR 900, 120 ALR 1352; *Glasson* v. *City of Louisville, supra,* but no undue burdens are permitted, *Valentine* v. *Christensen,* 316 U.S. 52, 86 L.Ed. 1262, 62 SCR 920; *Atlantic Tubing and Rubber Co.* v. *Cranston,* 105 R.I. 584, 254 A.2d 92; *D.O.B. Properties* v. *Providence Bureau of Licenses,* 90 R.I. 23, 153 A.2d 563. However, the power to regulate must be exercised in accordance with some proper rule or standard. *M.C.S. Realty Co.* v. *Cranston City Council,* 86 R.I. 179, 133 A.2d 765; *Tillotson,* 61 R.I. 293, 200 A.2d 767.

Consequently, the General Laws of Rhode Island 1956, 5-22-1, 5-22-2 and 5-22-4 and also the ordinance of the Town of West Greenwich requiring licenses for public entertainment, approved 12 July 1972, are overbroad and

in violation of Article I, the freedom of speech and expression clause of the Amendments to the United States Constitution which is made applicable to the States by the due process clause of Article XIV, section 1 of the aforesaid amendments. *A Quaker Action Group, et al.*, v. *Morton*, 516 F.2d 717.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C.A. No. 75-0218
STEPPING STONE ENTERPRISES, LTD.,
A RHODE ISLAND CORPORATION AND HENRY V. DAVIS
v.
ROBERT J. ANDREWS, ROBERT H. MAGUIRE,
CHARLES STANTON HAWKINS, LAURENCE R. WETHERBEE,
ROBERT S. POTTER AND HENRY DAVID THOMAS

AMENDED COMPLAINT

Stepping Stone Enterprises, Ltd., a Rhode Island Corporation, and Henry V. Davis, both of West Greenwich, Rhode Island, represent to this Court as follows:

1. Stepping Stone Enterprises, Ltd., a Rhode Island corporation, located in West Greenwich, Rhode Island, is and has been for the past ten (10) years engaged in operating a stable for equestrian recreation, an amphitheatre for the communication and entertainment by musical performers, a campground and trails for motorcycle competition. Henry V. Davis is the president of Stepping Stone Enterprises, Ltd.

2. Respondent Robert J. Andrews is the acting Chief of Police of the Town of West Greenwich. Respondents Robert H. Maguire, Charles Stanton Hawkins, Laurence R. Wetherbee, Robert S. Potter and Henry David Thomas are members of the Town Council thereof.

3. On 7-9-74 a member of the Rhode Island State Police complained to the District Court for the Third Division of this State of Rhode Island that plaintiff herein, Henry V. Davis, had violated the provisions of General Laws of Rhode Island 1956, 11-1-1, viz, conspiracy with a musical promoter to violate section 1 and section 4 of the

Town Ordinance of the Town of West Greenwich approved 12 July, 1972, requiring a license for public entertainment, and also for violation of section 1 and section 4 of the aforesaid ordinance. The aforesaid criminal complaints were docketed in the Rhode Island District Court as criminal number 74-4825 and 74-4826. On 9-23-74, after trial, the Rhode Island District Court entered a judgment of acquittal as to Henry V. Davis and on 11-11-74 the conspiracy charge was dismissed by reason of the Rhode Island Kent County Grand Jury returning an ignoramus.

4. On 4-4-75 and 4-12-75 plaintiff Stepping Stone Enterprises, Ltd. applied to the Town Council of the Town of West Greenwich, of which respondents Maguire, Hawkins, Wetherbee, Potter and Thomas are members, for a permit to exhibit and promote a musical theatrical performance at the plaintiff's premises. Concomitant said applications, the plaintiffs submitted checks totaling sixty-nine dollars (69) which were deposited and cashed by the Town of West Greenwich.

5. On 10 July, 1975 the respondent members of the Town Council of the Town of West Greenwich conducted a meeting of the Town Council and heard unsworn arguments pro and con with respect to the aforesaid applications for entertainment licenses. At the conclusion of said hearing, the respondent members of the Town Council denied the aforesaid applications stating as their reason that in the past, the plaintiff, Stepping Stone Enterprises, Ltd., had failed to provide adequate police, fire, medical, sanitation and community protection facilities.

6. In reliance on the acceptance of the license fees by the Town of West Greenwich, the plaintiffs entered into binding contracts with entertainers, private police agencies, first-aid personal and other services necessary for the holding of the aforesaid musical performances.

7. The denial of the aforesaid applications for entertainment licenses subject Stepping Stone Enterprises, Ltd. and Henry V. Davis to jeopardy and liability for damages for breach of the aforesaid contracts.

8. Stepping Stone Enterprises, Ltd. and Henry V. Davis claim that their right to exhibit and promote musical performances is protected by the freedom of speech and expression clause of Article I of the Amendments to the United States Constitution which is made applicable to the States by virtue of Article XIV, section 1 of the Amendments thereof and also deprived the plaintiffs in engaging in a lawful occupation which is a civil right guaranteed to them under 42 U.S.C. § 1983.

9. General Laws of Rhode Island 1956, 5-22-1, 5-22-2 and 5-22-4 and also the ordinance of the Town of West Greenwich requiring license for public entertainment, approved 12 July, 1972, all of which are appended to the within complaint and incorporated herein by reference are overbroad and in violation of Article I, the freedom of speech and expression clause of the Amendments to the United States Constitution in that the aforesaid statutes and ordinance empower the Town Council of the Town of West Greenwich to arbitrarily deny applications for permits to exhibit and perform musical concerts and as a result, deprive plaintiffs in engaging in a lawful occupation guaranteed to them by the due process clause of Article XIV, section 1 of the Amendments to the United States Constitution.

10. Notwithstanding the aforesaid premises, the plaintiffs, Stepping Stone Enterprises, Ltd. and Henry V. Davis, intend to exhibit and produce musical entertainments, for which licenses were applied, on the contracted dates, the first of which is 18 July, 1975. The aforesaid dates are listed in the applications therefore which are appended herewith and incorporated herein by reference.

11. The plaintiff Stepping Stone Enterprises, Ltd. and Henry V. Davis fear that the respondent members of the Town Council and acting Chief of Police of said town, respondent Robert J. Andrews, will cause plaintiff Henry V. Davis to be arrested and both plaintiffs to be prosecuted in Rhode Island Courts for alleged violation of the aforesaid Rhode Island General Laws and the West Greenwich Ordinance of 12 July, 1972.

12. This is an action to redress the deprivation under color of State law the rights, privileges, immunities and civil rights secured to the plaintiffs by the Constitution and the laws of the United States. The jurisdiction of this court is invoked by 28 U.S.C. § 1343.

Wherefore the plaintiffs pray that this Court grant them the following relief:

1. Issue a restraining order, a preliminary and permanent injunction against the respondent members of the Town Council of West Greenwich and the respondent acting Chief of Police thereof enjoining each of them from criminally prosecuting or causing to be criminally prosecuted the plaintiffs, their agents or servants for alleged violation of Rhode Island General Laws 1956, 5-22-1, 5-22-2 and 5-22-4 and the Ordinance of the Town of West Greenwich requiring licensing for public entertainment approved 12 July, 1972.

2. Issue a restraining order, a preliminary and permanent injunction against the respondent members of the Town Council of West Greenwich and the acting Chief of Police thereof enjoining them from preventing or interfering with contractors of the plaintiff corporation and its patrons and invitees from approaching the plaintiffs' premises and gaining access thereto, or from causing others to so interfere with contractors and patrons' approach and access thereto.

3. Declare unconstitutional the statutory power to prohibit the performing or exhibiting of musical concerts in the State of Rhode Island without a license and the statutory power of the respondent members of the West Greenwich Town Council to arbitrarily deny the issuance of said permits absent the legality of the performance, pursuant to 28 U.S.C. §§ 2201 and 2202.

4. Convene a three judge federal court to resolve the issues presented pursuant to 28 U.S.C. §§ 2281 and 2284.

Stepping Stone Enterprises, Ltd.
and Henry V. Davis
By their attorney,
(s) ARAM K. BERBERIAN
ARAM K. BERBERIAN

The Town Council reconvened, all members present, with Mr. Maguire presiding.

Mr. Maguire read the following statement:

We are here on applications filed by Stepping Stone Stables, under the Entertainment Ordinance, for permits for July 18; July 24, 25, 26 and 27; August 2; and August 9, 1975. Several persons have spoken in opposition to the granting of these permits and several have spoken in favor.

We have reviewed all of the evidence. In addition, all of the members of the Council except Councilmen Wetherbee visited the Blues Music Festival on the Fourth of July week-end just past. We observed those in attendance and the facilities at the ranch.

We have thoroughly considered all of the comments of the objectors and the applicant's witnesses. We are aware that some comments have greater weight than other comments.

Having done so, we make the following findings:

1. The applicant has not made adequate arrangements for Rescue and medical attention to his patrons. The comments of the objectors and our own observations show that there is need for substantial immediate medical facilities and these are absent.

2. The applicant has not made adequate arrangements for fire and police or other security services within the ranch confines. By its own admission, the applicant should not control those on the ranch premises in that its water facilities were damaged and rendered usless in a 4 or 5 hour period. Also, although seven or eight thousand persons paid, some twenty-five thousand gained access to the amphitheater.

3. The applicant has not made adequate arrangements for campers. The Ranch may accommodate fifteen hundred to two thousand persons, and the applicant anticipates three thousand five hundred attendance. Also, the persons who objected said, and our own knowledge supports, that double to triple the anticipated attendance is commonplace.

4. The applicant has not made adequate arrangements to protect neighboring property. The applicant has acquired insurance to protect itself from neighbors' claims, but has taken no other steps to preserve neighboring property.

5. The applicant has not made adequate arrangements for control of attendance and in fact says that it has been unable to do so in the past.

6. The applicant has not made adequate arrangements for lodging, food, and/or water. By testimony, patrons have gone to homes in West Greenwich and in Exeter to ask neighbors for food and water, and patrons have been observed sleeping on neighboring private property.

In consideration of the foregoing, it was moved by Mr. Potter and seconded by Mr. Thomas that the applications for July 18; July 24, 25, 26 and 27; August 2 and August 9, or entertainment Permits be denied. The vote was unanimous.

At this point, Mr. Potter again moved that the permits be denied. Mr. Thomas seconded. The vote was unanimous.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C.A. No. 75-0218

STEPPING STONE ENTERPRISES, LTD.,
A RHODE ISLAND CORPORATION AND HENRY V. DAVIS
v.
ROBERT J. ANDREWS, ROBERT H. MAGUIRE,
CHARLES STANTON HAWKINS, LAURENCE R. WETHERBEE,
ROBERT S. POTTER AND HENRY DAVID THOMAS

OPINION

October 16, 1975

DAY, District Judge. This is a civil action in which plaintiffs seek declaration and injunctive relief and the convening of a three-judge court. Plaintiffs allege that defendants, Chief of Police and members of the Town Council of West Greenwich, have violated their constitutional rights of free speech and expression and have deprived them of their right to engage in a lawful occupation.

Plaintiffs, who operate a recreation and entertainment complex, applied, on April 4 and May 12, 1975, for licenses to exhibit and promote musical theatrical performances at the plaintiffs' premises. Defendants, members of said Town Council from whom the licenses were requested, denied the plaintiffs' applications to conduct shows on July 24, 25, 26, 27, August 2 and 9, at a meeting held July 9 and 10, 1975.

In their Amended Complaint, plaintiffs allege that they intend to exhibit and produce entertainments on certain scheduled dates for which licenses have been denied. This they did not do. In fact, plaintiffs withdrew all applications for licenses for those dates subsequent to August 9,

listed in the complaint. Plaintiffs have filed one new application for a show to be held September 13. At the time of the hearing on the instant motion that application was still pending.

On July 17, 1975, plaintiffs' application for a temporary restraining order was denied.

Plaintiffs' motion for a preliminary injunction is now before the Court. Plaintiffs seek a preliminary injunction to prevent criminal prosecution of themselves for violations of the licensing statutes of the State of Rhode Island and ordinances of the Town of West Greenwich. They also seek a preliminary injunction to prevent local authorities from interfering with the conduct of their business. Two issues are presented:

1. Whether this action seeking injunctive relief from the enforcement of a state statute, challenged on constitutional grounds, requires the convening of a three-judge court.
2. Whether, in light of the parties' and the public interest and the fact that there exists a temporary restraining order and a preliminary injunction against the plaintiff in the Superior Court of the State of Rhode Island, and in view of plaintiffs' constitutional claims, this Court should grant a preliminary injunction.

I.

Under 28 U.S.C. §§ 2281 and 2284 a three-judge court must be convened if a substantial constitutional question is raised. As defined by the Supreme Court in *Goosby* v. *Osser,* 409 U.S. 512, 518 (1973), a "substantial" question is one which is not "essentially fictitious", "obviously frivolous", "obviously without merit", or so settled by prior decisions of the Supreme Court that the question is no longer open.

It is elemental that a state has broad powers to establish and execute standards of conduct relative to the health and safety of its citizens. It is a vital part of a state police power. *Barsky* v. *Board of Regents,* 347 U.S. 442 (1954).

It appears from the evidence produced before this Court that the denials of said permits occurred because of the plaintiffs' failure to comply with health and safety regulations. Defendants' Exhibit C. The Rhode Island statute in question provides specifically for denials based on a danger to the public health. R.I. Gen. Laws, § 5-22-5. There being no substantial constitutional question presented, this Court declines to request that a three-judge court be convened. *Ex Parte Poresky,* 290 U.S. 30 (1933).

Testimony produced during the hearing on the instant motion revealed that all of the shows listed on the license application appended to the Amended Complaint, which were scheduled for dates subsequent to hearing on this motion, had been cancelled. There exist no future dates on which shows are scheduled, for which license applications have been denied.

It is well settled that a Federal Court will enjoin a threatened criminal prosecution only to prevent great and immediate harm occasioned by bad faith harassment. *Younger* v. *Harris,* 401 U.S. 37 (1971); *Perez* v. *Ledesma,* 401 U.S. 82 (1971); *Dumbrowski* v. *Phister,* 380 U.S. 479 (1965).

In my opinion there has been no showing by the plaintiffs of any bad faith harassment by the defendants in their denials of said applications for said licenses. On the contrary, the evidence established that said denials were made by the defendants pursuant to and consistent with a legitimate interst in the health and safety of the citizens of the Town of West Greenwich and the State of Rhode Island. *Chernov* v. *Scuncio,* 107 R.I. 439, 268 A.2d 424 (1970).

Since the plaintiffs have failed to establish that they are likely to prevail at a trial upon the merits of this action, their prayer for a preliminary injunction must be denied. Counsel for the defendants will prepare and present for entry an appropriate order denying said prayer for preliminary injunction.

(s) Edward W. Day

District Judge

United States Court of Appeals
For the First Circuit

No. 75-1436

STEPPING STONE ENTERPRISES, LTD.,
a RHODE ISLAND CORPORATION,
and
HENRY V. DAVIS,
PLAINTIFFS, APPELLANTS,
v.
ROBERT J. ANDREWS, ROBERT H. MAGUIRE,
CHARLES STANTON HAWKINS, LAURENCE R.
WETHERBEE, ROBERT S. POTTER and
HENRY DAVID THOMAS,
DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND
(HON. EDWARD W. DAY, *U. S. District Judge*)

Before COFFIN, *Chief Judge*,
McENTEE and CAMPBELL, *Circuit Judges*.

Aram K. Berberian for appellants.
James Santaniello for appellees.

March 11, 1976

McENTEE, *Circuit Judge*. This is an appeal from the denial of declaratory and injunctive relief and from the refusal to convene a three-judge court under 28 U.S.C. §§ 2281 and 2284. Appellants sought these forms of relief, alleging that defendants—various officials of the town of West Greenwich, Rhode Island—had violated their constitutional rights to free speech and expression and had

deprived them of their right to engage in a lawful occupation. Specifically, appellants alleged that the town's denial of a license for the exhibition and promotion of certain musical theatrical performances on appellant's premises infringed the above-mentioned rights.

Appellants own what they call a "ranch" in the rural town of West Greenwich. They applied for a license to conduct a rock concert on that property during the July 4th weekend of 1975; that license was granted, and the concert was held. Appellants' applications for licenses for concerts to be held on July 18, 24, 25, 26, 27 and August 2 and 9 were, however, denied by the town council after a public hearing. The denial of these licenses was based on the following findings of fact made by the council:

1) Applicant's failure to make adequate arrangements for rescue and medical attention.
2) Applicant's failure to make adequate arrangements for fire and police or other security services within the confines of the ranch.
3) Applicant's failure to make adequate arrangements for campers (several thousand of whom were anticipated).
4) Applicant's failure to make adequate arrangements to protect neighboring property.
5) Applicant's failure to make adequate arrangements to control attendance.
6) Applicant's failure to make adequate arrangements for lodging, food and/or water.

Appellants then brought an action in the district court seeking to enjoin potential criminal prosecution for violations of R.I. G.L. §§ 5-22-1, 5-22-2 and 5-22-4 and of the town ordinance (enacted pursuant to those statutes) requiring the licensing of public entertainment.[1] Appellants

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[1] The statutes and ordinance in question are reproduced in pertinent part in the Appendix. In addition, R.I. G.L. § 5-22-5, to which § 5-22-1 refers, is also reproduced in the Appendix to the extent that it is relevant to this case.

also sought to enjoin town officials from interferring with the proposed performances. They additionally sought a declaratory judgment concerning the constitutionality of the Rhode Island statutes requiring the licensing of musical concerts and of the actions of the West Greenwich town council pursuant to those statutes. Finally, appellants sought the convening of a three-judge court to consider these matters. The district court denied all the requested relief and this appeal followed. We affirm.

The district court acted properly in declining to enjoin interference by town officials with unlicensed performances at appellants' ranch. There was ample evidence from which the court could conclude, as it did, that the license denials "were made by the defendants pursuant to and consistent with a legitimate interest in the health and safety of the citizens of the Town of West Greenwich and the State of Rhode Island." Indeed, appellants' brief on this appeal concedes as much:

> "In the instant case, the public inconvenience, annoyance and unrest arose because of trespasses upon private property by patrons and others attending Stepping Stone's rock concerts, general litter, and traffic congestion making it difficult for the performance of municipal safety services."

Appellants do not in fact contend that there was anything arbitrary or pernicious about the *manner* in which the licenses were denied them nor do they contest the accuracy of the findings of fact made by the town council prior to denying the licenses. Rather they argue that the town's licensing ordinance and the state statutes from which it derives its authority are unconstitutional. Although appellants' attack on the ordinance and statutes is of the shotgun variety, it nevertheless misses the mark.

It is well established that a state and, when properly authorized, a local government have broad powers to establish

standards for the protection of health and safety. *See, e.g., Barsky* v. *Board of Regents,* 347 U.S. 442, 449 (1954); *Friendship Medical Center, Ltd.* v. *Chicago Board of Health,* 505 F.2d 1141, 1149 (7th Cir. 1974), *cert. denied,* 420 U.S. 997 (1975). *See also Police Department of Chicago* v. *Mosley,* 408 U.S. 92, 98 (1972); *Grayned* v. *City of Rockford,* 408 U.S. 104, 115 (1972); *Cox* v. *New Hampshire,* 312 U.S. 569 (1941); *Cantwell* v. *Connecticut,* 310 U.S. 296, 306-07 (1940); *Glasson* v. *City of Louisville,* 518 F.2d 899, 904 (6th Cir.) *cert. denied,* 44 U.S.L.W. 3264 (U.S. Nov. 4, 1975). It does not appear to us that the statutes and ordinance challenged here do otherwise. Neither the statutes nor the ordinance provide for the denial of a license because of the *contents* of a proposed show; thus many of the cases cited by appellants—*e.g., Doran* v. *Salem Inn, Inc.,* 422 U.S. 922 (1975); *Erznoznik* v. *City of Jackson,* 422 U.S. 205 (1975); *Southeastern Promotions, Ltd.* v. *Conrad,* 420 U.S. 546 (1975); *Glasson* v. *City of Louisville, supra* — are simply inapposite inasmuch as they deal with impermissable governmental attempts to control the *contents* of expression. None of these cases suggest that a town may not enact reasonable licensing provisions for the protection of the public's health and safety.

It should also be noted that the statutes and ordinance do not place appellants' right to be heard "in the uncontrolled discretion of the Chief of Police," *Saia* v. *New York,* 334 U.S. 558, 560-61 (1948), or of any other official. Definite standards, related to the health and safety of the citizenry, govern the decision to license vel non. *See Police Department of Chicago* v. *Mosley, supra* at 97; *Kunz* v. *New York,* 340 U.S. 290 (1951). Nor are the statutes and ordinance void for overbreadth; rather, they are carefully tailored enactments "dealing with conduct subject to regulation so as to vindicate important interests of society . . . ." *Cox* v. *Louisville,* 379 U.S. 559, 564 (1965).

The district court, therefore, acted properly in denying both injunctive and declaratory relief in this case. It also declined to convene a three-judge court, finding that appellants had failed to raise a substantial constitutional question. "Title 28 U.S.C. § 2281 does not require the convening of a three-judge court when the constitutional attack upon the state statutes is insubstantial." *Goosby* v. *Osser,* 409 U.S. 512, 518 (1973). In the light of our discussion, *supra,* and the decisions of the Supreme Court cited, the present attack upon the constitutionality of the Rhode Island statutes can only be viewed as insubstantial.[2]

Affirmed.

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[2] Appellants also object, albeit somewhat obscurely, to an injunction against Stepping Stone obtained by the State in the state court relative to a collateral matter. They allege that there were procedural irregularities involved in the issuance of this injunction and that a fraud was committed upon both the Rhode Island courts and Stepping Stone. On the basis of these allegations they argue that the district court "should have declined to dignify the fraud by not giving the Kent County Superior Court injunction any credance (sic) or weight whatsoever." It does not appear from the district court's opinion, however, that its denial of relief to appellants was in any meaningful way predicated on the existence of the state court injunction and, therefore, we need not deal with appellants' allegations as to procedural irregularities in the state proceedings.

General Laws of Rhode Island (1956):

5-22-1. *Town regulatory powers.* — The town councils and city councils may license, regulate and in those certain cases specifically set forth in § 5-22-5 may prohibit and suppress theatrical performances, rope and wire dancing and all other shows and performanees in their respective towns, conforming to law.

5-22-2. *Town license for exhibitions,* — They may grant a license, for a term not exceeding one (1) year, under such restrictions and regulations as they shall think proper, to the owner of any house, room or hall in the town, for the purpose of permitting exhibitions therein, which license shall be revocable at the pleasure of said town council.

5-22-4. *Town license required.* — No person shall publicly or for pay or for any profit or advantage to himself, exhibit or promote or take part in any theatrical performance, or rope or wire dancing or other show or performance, or conduct, engage in or promote any wrestling, boxing or sparring match or exhibition, nor shall any person for any pecuniary profit or advantage to himself, promote any public roller skating in rinks or halls, or give any dance or ball, without a license from the town council of the town in which such performance, show, exhibition, dance or ball is sought to be given.

5-22-5. *Local licensing of amusements — Prohibition of obscene shows and performances.* — Any town council, the board of police commissioners, or in the case of the City of Providence, the bureau of licenses, or any other licensing board or authority in any city or town may require a license for any place within its respective city or town at which any such performances, shows, exhibitions, public roller skating, dances or balls are presented or conducted for any term not exceeding one (1) year, and may deny, revoke or refuse to renew any such license only upon the ground that the said place presents a danger to the public health or safety.

. . . .

TOWN OF WEST GREENWICH ORDINANCE REQUIRING LICENSE FOR PUBLIC ENTERTAINMENT
APPROVED JULY 12, 1972

Be it ordained by the Town Council of the Town of West Greenwich, as follows:

SECTION 1. *APPLICATION*:

No person shall hold any public entertainment within the town of West Greenwich without first filing a written application for a license to do so with the Town Council of said Town. Said application shall be filed not later than seven days prior to the next regular meeting of said Town Council, provided, however, that said Town Council may waive this requirement on good cause shown by the applicant.

SECTION 2. *COMPLIANCE* WITH OTHER LAWS:

No license shall issue by said Town Council until the applicant or applicants shall affirmatively show that the proposed entertainment if allowed, or the premises to be used therefor, if allowed, shall otherwise comply with all applicable Federal, State and local laws relative to the health, safety and welfare of the public, including, but not limited to: Traffic, zoning, parking, fire protection, and the like.